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STRYKER CORPORATION and
STRYKER SALES CORPORATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RYAN Q. CLARIDGE,

Plaintiff,

v.

I-FLOW CORPORATION; a Delaware corporation; I-FLOW, LLC, a Delaware limited liability company; DJO LLC (f.k.a. DJ ORTHOPEDICS, LLC), a Delaware limited liability company; DJO, INCORPORATED, aka DJO, INC., a Delaware corporation; STRYKER CORPORATION, a Michigan corporation; and STRYKER SALES CORPORATION, a Michigan corporation.

Defendants.

CASE NO.: 2:18-CV-01654-GMN-BNW

DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' JOINT MOTION TO AMEND THE SCHEDULING ORDER [DKT. NO. 60]

ORAL ARGUMENT AND HEARING REQUESTED

[DECLARATION OF CHRISTOPHER NORTON FILED CONCURRENTLY HEREWITH IN SUPPORT]

Defendants I-Flow, LLC; Stryker Corporation; and Stryker Sales Corporation (collectively, "Defendants") hereby jointly submit their Reply to Plaintiff Ryan Claridge's ("Claridge" or "Plaintiff") Opposition ("Opposition") to Defendants' Joint Motion to Amend the Scheduling Order (Dkt. No. 60) (the "Motion").

I. INTRODUCTION

Plaintiff opposes this Motion by shifting blame and criticizing the logical pace of discovery that Defendants have followed. But to the extent any "delays" have made it impossible for the Parties to comply with the Scheduling Order [Dkt. No. 39] ("Scheduling Order"), they have been caused by Plaintiff's slow, piecemeal disclosures of key information, witnesses, and documents. In fact, Defendants' recent unearthing of the files in Plaintiff's California Workers' Compensation case against the New England Patriots ("California Workers' Compensation File")—which Defendants had to obtain on their own because Plaintiff never produced them—only confirms the Parties need even more than the modest 120-day extension sought in the Motion. Plaintiff's California Workers' Compensation File is full of information not previously disclosed by Plaintiff that directly contradicts his claim that Defendants' pain pumps, and nothing else, caused his football career to fail, resulting in millions of dollars in lost wages and other damages. Indeed, it contains doctors' reports and Plaintiff's own deposition testimony showing that Plaintiff stopped playing professional football due to numerous injuries and surgeries—many of them undisclosed by Plaintiff—in several parts of his body.

Plaintiff's piecemeal productions and omissions of crucial information, witnesses, and documents in his ***eight incomplete supplemental disclosures*** have hindered the discovery process. Plaintiff's production pace has stalled Defendants' identification and investigation of new facts and potential witnesses, and have made it impossible for Defendants to retain and disclose experts. In a case as complex as this one—which requires Defendants to investigate Plaintiff's entire adult life to test the claim that only Defendants are responsible for the damages Plaintiff alleges he suffered—extensive and careful discovery is necessary. Plaintiff's lack of full cooperation and complications outside of the Parties' control, including witness unavailability and the difficulty in locating Plaintiff's records depicting injuries which occurred over 13 years

ago, have also affected the pace of the discovery process and made it impossible to complete discovery within the currently set deadlines. It is also noteworthy that Plaintiff had a five (5) month head start on Defendants. Specifically, Plaintiff testified at his deposition that he retained counsel for this action in April 2018, which means his attorneys had all this extra time to investigate the claim before Stryker and I-Flow even knew of this action's existence.

In light of the complexity of this case and the extensive amount of discovery still outstanding, the short window of discovery[1] provided by the Scheduling Order is simply insufficient. Defendant's acquisition of Plaintiff's California Workers' Compensation File, and the information, witnesses, and documents contained therein have made clear that Defendants have even more work to do than previously anticipated. Defendants require more time than the 120 days requested in the pending Motion.

As explained below, Plaintiff's Opposition sets forth disingenuous and misguided arguments. Indeed, Defendants have demonstrated they have diligently pursued discovery, and Plaintiff cannot credibly argue otherwise. Further, Defendants' Motion is not premature because it is clear that the Parties cannot comply with the Scheduling Order. Plaintiff's suggestion that Defendants must wait until the eve of the close of discovery to move to amend the Scheduling Order is nonsensical, ignores Ninth Circuit precedent, and disregards the Court's need for adequate notice to manage its docket.

Since Plaintiff filed his Opposition, the Parties have met and conferred, and Defendants have explained that although they have identified additional potential witnesses, they have not yet been able to contact those witnesses, interview them, or arrange their depositions. Based on that discussion, Plaintiff indicated that he would not file the motion to compel discussed in his Opposition.

[1] Plaintiff's counsel himself described the discovery period provided by the Scheduling Order as a "short window of discovery" in a May 7, 2019, email to Defendants' counsel.

II. ARGUMENT

A. Plaintiff's Alleged Damages Are Unique and Warrant Extensive Discovery

Plaintiff attempts to downplay the complexity of this matter and the need for extensive discovery by complaining that "Defendants have investigated countless pain pump cases over the years" and that the case has already exceeded a six-month "default discovery period in this district." Dkt. No. 63 at 2. But Plaintiff's claim for damages of up to $30 million makes this case unlike any other pain pump case defense counsel have defended. Declaration of Christopher Norton ("Norton Decl.") ¶ 2. The extensive discovery required relates not to any issues common to other pain pump cases but to the specific details of Plaintiff's many relevant injuries, his complex medical picture, the diverse factors involved in his claim that he has been deprived of an NFL career, and other complicated damages issues. Indeed, Plaintiff blames the entire failure of his professional football career, as well as other damages, including subsequent medical conditions and lost wages, on his use of Defendants' pain pumps during two surgeries in 2005 and 2006. *See* Complaint, at ¶¶ 32-34, 50, 83, and 89. ***This puts Plaintiff's entire adult life at issue***, and requires Defendants to conduct extensive discovery so as to evaluate Plaintiff's claim that it was Defendants' pain pumps—and nothing else—that caused his alleged damages.

As Plaintiff's case is unique and highly complex, any "default" discovery schedules are inadequate. The fundamental goal of discovery and of Federal Rule of Civil Procedure ("FRCP") 16, is to allow parties to try cases on the merits. *Allen v. Bayer Corp.*, 460 F.3d 1217, 1227 (9th Cir. 2006); *Dreith v. Nu Image, Inc.*, 648 F.3d 779, 787 (9th Cir. 2011) (quoting *Allen*, 460 F.3d at 1227). For this reason, courts do not strictly enforce unworkable schedules, and instead exercise their inherent power to manage their own dockets to promote the well-settled policy favoring adjudication of cases on the merits. *See Allen*, 460 F.3d at 1227; *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992) (explaining that amendment of a scheduling order is appropriate whenever deadlines "cannot reasonably be met despite the diligence of the party seeking the extension.").

Here, the case's complexities and the need for additional time for discovery—described in detail in the Motion—were clear even before the Court issued its Scheduling Order. In fact,

Defendants explained the need for extensive discovery during meet and confer efforts with Plaintiff's counsel on February 5, 12, and 15, 2019. Norton Decl. ¶ 3. The Court agreed, and attempted to provide ample time by granting the Parties a year to conduct discovery. Dkt. No. 39. Nevertheless, the Court clarified the Parties would be free to bring the present Motion, pursuant to Fed. R. Civ. P. 16(b)(4) and Local Rules 26-4 and IA 6-1, if the Scheduling Order proved too restrictive. *See* Dkt. No. 38 ("request for extension of these deadlines will be scrutinized for a strong showing of good cause and due diligence"); *see also* Fed. R. Civ. Proc. 16(b) ("A schedule may be modified only for good cause and with the judge's consent."); *Johnson*, 975 F.2d at 609 (explaining amendment of Scheduling Order is appropriate whenever deadlines "cannot reasonably be met despite the diligence of the party seeking the extension."). As explained below and in the Motion, despite Defendants' diligent efforts to date, it will not be possible for the Parties to comply with the Scheduling Order because much important discovery still remains to be completed. Amendment of the Scheduling Order is therefore proper.

B. Defendants Have Diligently Pursued Discovery

Courts exercise their inherent power to manage their own dockets so as to promote the adjudication of cases on the merits, and thus amend Scheduling Orders whenever deadlines "cannot reasonably be met despite the diligence of the party seeking the extension." *See Allen*, 460 F.3d at 1227; *Voggenthaler v. Maryland Square, LLC*, 2010 U.S. Dist. LEXIS 49100 *25, 2010 WL 1553417 (D. Nev. 2010) (citing *Johnson*, 975 F.2d at 609). In his opposition, Plaintiff is quick to point fingers and disparage Defendants' efforts in pursuing discovery. *See* Dkt. No. 63 at 6. Plaintiff argues Defendants have not been diligent because only seven depositions have taken place in the five months since the start of discovery and because Defendants have not pursued or moved to compel third party discovery. *Id.*

But Plaintiff misleads the Court by failing to mention that his piecemeal productions and omissions of key witnesses in his ***eight incomplete supplemental disclosures*** have contributed to the pace of discovery. As careful discovery follows a logical, organized order, Plaintiffs' own pace in helping to develop the record has prevented Defendants from being able to notice more depositions. Plaintiff also misleads the court by failing to explain that the pace of discovery has

also been affected by factors beyond Defendants' control, including the difficulty in locating key witnesses, coordinating the Parties' and witnesses' schedules for depositions, and obtaining necessary medical records—many of which Plaintiff has still not produced and which third parties are searching for in archives because it has been over a decade since Plaintiff had the surgeries which allegedly caused his injuries. Lastly, Plaintiff ignores that Parties must seek discovery from each other before burdening third parties, and that it is improper for Defendants to seek to force third parties to provide discovery they can obtain from Plaintiff.[2] Moreover, Defendants cannot seek information from third parties until Plaintiff discloses who those third parties are.

The pace at which discovery has been conducted is not a result of Defendants' lack of diligence, and Plaintiff knows it. Defendants' Motion is properly granted.

1. Defendants Are Entitled to Pursue Discovery in a Logical Order, and Plaintiff's Piecemeal Productions and Omissions Only Serve to Stall Discovery

Responsible and efficient discovery is not conducted haphazardly—it follows a logical order. To avoid duplication of efforts, minimize the burden of discovery, and expedite the depositions of nonparty witnesses, Defendants have responsibly sought to first develop the record through written discovery from Plaintiff. Norton Decl., ¶ 4. Defendants served Interrogatories and Document Requests on Plaintiff on March 26 and May 9, 2019. *Id.* To date, Plaintiff has provided eight incomplete supplemental disclosures containing information, documents, and witnesses crucial to Defendants' case. *Id.* at ¶ 5. These disclosures, however, have come at a seemingly deliberate slow pace, and have notably omitted many key documents responsive to Defendants' Document Requests. *Id.*

For example, although Defendants' March 26, 2019, Document Requests sought all prior workers' compensation claims filed by Plaintiff, Plaintiff never produced any such files. *Id.* at ¶ 6, Ex. A at Request No. 25 Instead, Defendants were forced to investigate and request Plaintiff's prior workers' compensation case files from the California Workers' Compensation Appeals Board ("WCAB") and Massachusetts Department of Industrial Accidents ("DIA"). *Id.* at

[2] *See* section II.B.4., *infra.*

¶ 7. After having to wait three months for WCAB to release Plaintiff's records, Defendants finally received Plaintiff's California Workers' Compensation File against the New England Patriots on August 7, 2019. *Id.*

Plaintiff's California Workers' Compensation File contains hundreds of pages of documents responsive to Defendants' Document Requests, including Plaintiff's medical records, and highly relevant information concerning Plaintiff's time with the New England Patriots. *Id.* at ¶ 8. Notably, Plaintiff's California Worker's Compensation File ***identifies previously undisclosed doctors who examined and treated Plaintiff during the most crucial time period*** (2006 through 2010). Why Plaintiff has failed to disclose the identity of these doctors remains unclear. The California Workers' Compensation File also contains Plaintiff's Notice of Termination from the New England Patriots, which clarifies Plaintiff was not released due to any injury, but instead due to "unsatisfactory" performance and the team's anticipation that Plaintiff would make "less of a contribution to the Club's ability to compete on the playing field than another player or players whom the Club intends to sign." The File also contains reports on Plaintiff's ***inability to play football because of injuries unrelated to Defendants' products or even the shoulder on which Defendant's products were used.*** Lastly, Plaintiff's own statements in the File directly contradict that only his left shoulder injuries limited his ability to play football. Plaintiff's omissions of such crucial—and potentially dispositive—documents from his disclosures cannot be coincidental, and Defendants expect to find more documents and information damaging to Plaintiff's case once Defendants' are able to obtain complete files and records from all of the individuals and entities identified from this File. *Id.* at ¶ 8.

Given that Plaintiff claims Defendants' pain pumps, and nothing else, caused his alleged $30 million in damages, Plaintiff's entire adult life is at issue. *See* Complaint, at ¶¶ 32, 33, 34, 50, 83, 89. Defendants are entitled to investigate every aspect of Plaintiff's claims, and need time to diligently examine the thousands of documents produced by Plaintiff on a lengthy rolling basis. Defendants also need time to locate, contact, and investigate the many new witnesses and leads in Plaintiff's California Worker's Compensation File and continuing disclosures. Plaintiff cannot be

allowed to slow down the pace of discovery and then point fingers at Defendants, who rightly seek to understand the record before blindly setting depositions.

2. Defendants' Efforts Demonstrate They Have Diligently Pursued Discovery

Despite Plaintiff's piecemeal disclosures of crucial information, documents, and witnesses, Defendants have diligently investigated leads and worked with third parties to obtain information not in Plaintiff's possession, custody, or control. Defendants began subpoenaing records on December 11, 2018, and have successfully obtained over 2,101 pages of records from 27 different third parties. Norton Decl., ¶ 9. Defendants have also diligently reviewed Plaintiff's rolling disclosures as they came in, and have issued subpoenas and noticed new depositions on a regular basis as the record developed. *Id.* Indeed, Defendants have so far deposed ***seven witnesses in four states***. *Id.* at ¶ 10. These depositions included those of Plaintiff, Scott Parkhurst, and Ryan Wolfe in Nevada; Mike Wahle and Chris Caminiti in California; Jason Young in Utah; and Steve Johns in Maryland. *Id.* Upcoming depositions also include those of Dr. Randall Yee, Dr. Ronald Koe, Dr. Jim Gardiner, Dr. Michael Metcalf, John Robinson[3], and the Person(s) Most Knowledgeable of the New England Patriots. *Id.* at ¶ 11.

And Defendants are only continuing to investigate the new information in Plaintiff's ongoing productions and other documents they uncover. *Id.* at ¶ 8-9. For example, Defendants will subpoena the new doctors, insurance carriers, and witnesses described in Plaintiff's California Workers' Compensation File, which Defendants only just received last week. *Id.* Defendants expect that five to ten new depositions will be necessary to investigate the

[3] Plaintiff misleads the Court by claiming that "Defendants' counsel refused to ask questions at [John Robinson's June 6, 2019,] deposition—even though counsel for all parties were present—opting instead to notice a second deposition, causing further delays and needlessly increasing costs." Dkt. No. 63 at 4. Apparently, Plaintiff sought to prejudice Defendants by noticing a trial deposition of Mr. Robinson at the inception of discovery, with no special need or circumstances justifying such an unorthodox, out-of-order procedure. Defendants were clearly not in a position to effectively question Mr. Robinson or conduct a trial examination of Robinson or any other trial witness at that time. Norton Decl., ¶ 12. Plaintiff's counsel was amenable to Defendants' proposal to depose Mr. Robinson when the record was further developed. *Id.* Additionally, Mr. Robinson offered expert testimony during his June 6 deposition. *Id.* Thus, Defendants reserved the right to question Mr. Robinson once they obtained more information about Plaintiff's claims, including additional medical records and testimony from fact witnesses in the case. *Id.*

information in the California Workers' Compensation File. *Id.* Defendants will also investigate the information described therein—***which Plaintiff had never disclosed before***—and which seems to directly contradict Plaintiff's position that it was Defendants' pain pumps, and nothing else, that caused his professional football career to fail. In sum, Defendants have and continue to move discovery along at a diligent, logical pace.

3. Factors Beyond Defendants' Control Have Contributed to the Pace of Discovery

Even though Defendants have diligently pursued discovery, complications beyond Defendants' control have also affected the pace of the process. For example, in response to Defendants' discovery requests, third parties have either indicated they will need time to search their archives due to the fact that Plaintiff's injuries occurred over 13 years ago or reluctantly complied, producing documents after months of ongoing meet and confer efforts with Defendants. *Id.* at ¶ 13. Other third party discovery has proven even more challenging. For instance, Adam Seward and Eric Mangini—both key witnesses who could directly attest to Plaintiff's abilities as a football player, as well as any injuries he may have suffered during his career—have avoided Defendants' attempts to contact them. *Id.* at ¶ 14. Additionally, according to the professional teams that employ them, other NFL witnesses have been unavailable during the off-season, with many traveling on vacation. *Id.* at ¶ 15. Due to the notoriety of many of these NFL witnesses, and the fact that their contact information is not publicly available, Defendants have had to work with the NFL teams that employ them to obtain their contact information. *Id.* This is an ongoing process which Defendants are diligently pursuing. *Id.*

Finally, contrary to what Plaintiff's Opposition suggests, the unavailability of witnesses, as well as that of counsel[4] ***for all Parties*** has also affected the pace of discovery. It cannot be disputed that counsel for all Parties have diligently worked to set deposition dates that would work for everyone who needed to be involved. *See id.*, ¶ 16. Nevertheless, between travel plans, other obligations, the sheer number of people that needed to attend each deposition, and the fact

[4] Defendants would typically be reluctant to discuss the unavailability of counsel. Plaintiff's incomplete recitation of the facts involving Defense counsel's schedule, however, makes it necessary to address this issue.

that counsel for the Parties practice in four different cities across the country, the Parties were unable to schedule all depositions as early as they originally wished. *Id.* For example, Defendants attempted to depose Plaintiff in June and July of 2019, and even agreed to travel to Michigan to depose Plaintiff while he was on vacation, but Plaintiff's counsel was unavailable on the Defendants' available dates. *Id.* The same occurred with the depositions of Drs. Yee and Koe, Plaintiff's surgeons. *Id.* Defendants proposed several dates in June, July, and August, but either Plaintiff's counsel or the doctors were not available. *Id.* These types of scheduling issues are not uncommon in multi-party litigation, and Defendants would not think to fault Plaintiff or Plaintiff's counsel for their scheduling conflicts. Plaintiff's incomplete and accusatory recitation of the facts surrounding the availability of witnesses and counsel is uncalled for.

4. Motions to Compel Third Party Discovery Have Been Unnecessary

Lastly, by suggesting that Defendants have somehow not been diligent in their pursuit of discovery because they have not moved to compel third party discovery, Plaintiff downplays the effects of his slow, piecemeal disclosures and ignores that discovery must first be sought from Parties. *See, e.g., Soto v. Castlerock*, 282 F.R.D. 492, 505 (E.D. Cal. 2012) (explaining the "preference for parties to obtain discovery from one another before burdening non-parties with discovery requests."); *Davis v. Ramen*, 2010 U.S. Dist. LEXIS 115432, 3 (E.D. Cal. 2010) (denying a request for a subpoena because plaintiff had not demonstrated that the records were only obtainable through the non-party); *Insituform Techs, Inc. v. CAT Contracting, Inc.*, 914 F. Supp. 286, 287 (N.D. Ill. 1996) (holding a party should not be permitted to seek information from a non-party that they can obtain from the opposing party); Fed. R. Civ. P. 26(b)(2)(C) (giving courts the ability to limit discovery if "the discovery sought . . . is obtainable from some other source that is more convenient, less burdensome, or less expensive."). Also, Defendants have had no reason to compel third parties to comply with their requests. Indeed, third parties are cooperating—either by searching their archives in search for Plaintiff's decade-old records or by maintaining open communication with Defendants regarding their progress and concerns. *See* Norton Decl., ¶ 14. Also, as Plaintiff has continued to provide responsive documents—albeit in a seemingly deliberate slow pace—Defendants have had no good cause to burden third parties with

improper motions to compel. It would be an abuse of process and a waste of judicial resources for Defendants to file motions to compel against third parties. Plaintiff's argument only seeks to distract the Court from Plaintiff's own contributions to the pace of discovery.

C. Defendants' Motion is Not Premature Because It Is Clear Now That the Parties Will Be Unable to Comply With the Deadlines of the Scheduling Order

It is now clear that the Parties will be unable to comply with the Scheduling Order and will need to extend all deadlines by at least 120 days. In fact, the surfacing of Plaintiff's California Workers' Compensation File, and the information, witnesses, and documents contained therein have made clear that Defendants have even more work to do than previously anticipated, and that even more time would be appropriate. Plaintiff needs to complete his document productions and ongoing disclosures, and Defendants need time to investigate and follow new leads in those disclosures. Indeed, Defendants will need time to identify, subpoena, and depose the new doctors, insurance carriers, and witnesses disclosed in Plaintiff's California Worker's Compensation File and any additional disclosures before they can retain and disclose any experts. Additionally, as discussed above, Defendants will need time to contact and interview potential NFL witnesses, which are not easily located and will likely be unavailable until after the conclusion of the 2019 football season. *See* Norton Decl., ¶¶ 14-15. Yet Plaintiff attempts to manufacture a bright-line rule that a motion to amend a scheduling order is never appropriate when there are four months left for discovery. Dkt. No. 63 at 7-8. Plaintiff's efforts fall flat.

As an initial matter, Plaintiff ignores binding Ninth Circuit precedent that provides that amendment of a scheduling order is appropriate whenever it is demonstrated that deadlines "cannot reasonably be met despite the diligence of the party seeking the extension." *See Johnson*, 975 F.2d at 609. Additionally, Plaintiff relies on readily distinguishable cases that are inapplicable here. For instance, Plaintiff first cites *Painter v. Atwood*, where the Court denied a stay for discovery pending the resolution of a motion to dismiss. 2013 U.S. Dist. LEXIS 44592, *2-3 (D. Nev. 2013). But the issue in *Painter* was not whether there was enough time to comply with the scheduling order, as is the case here. *See id.* Instead, the issue in *Painter* was whether

the parties needed to continue to conduct discovery while they waited for the resolution of a motion to dismiss. *Id.* *Painter* is therefore inapposite.

Plaintiff also cites *Medrano v. Genco Supply Chain Solutions*, where the court denied a request to modify a discovery schedule because there were four months left in discovery. 2011 U.S. Dist. LEXIS 110114, *3-4 (E.D. Cal. 2011). But unlike here, the parties in *Medrano* did not demonstrate they would be unable to comply with their current schedule. *See id.* Instead, the *Medrano* parties merely explained that a death in the family of one of the plaintiffs, an ongoing injury to one of the plaintiff's attorneys, and the temporary unavailability of one of the defendant's attorneys warranted a blanket extension of the discovery deadlines. *Id.* at *2. Optimistic that the parties could advance discovery despite their inconveniences, the *Medrano* court denied the request without prejudice, giving the parties leave to renew their request in 60 days. *Id.* at *4. The complexity of the present case, and the large amount of discovery left to complete make *Medrano* inapplicable.

Lastly, Plaintiff cites *Palmer v. Woodford*, a readily distinguishable civil rights action by a state prisoner proceeding *pro se*. 2012 U.S. Dist. LEXIS 79893, *1 (E.D. Cal. 2012). In *Palmer*, the court denied the prisoner's request to extend the discovery cut-off date because defendants had already been ordered to serve their discovery responses—the only discovery at issue—within fourteen days. *Id.* at 15. Plaintiff's reliance on *Palmer* is greatly misguided. Indeed, the stark differences in the circumstances and quantity of discovery at issue between the present case and *Palmer* lead Defendants to question whether Plaintiff actually read and understood *Palmer*.

In sum, Plaintiff has failed to provide support for his argument that Defendants' Motion is premature. As it is now clear that the Parties will be unable to comply with the Scheduling Order, Defendants' Motion is properly granted.

D. <u>Defendants Do Not Have Any Secret, Undisclosed Witnesses</u>

Finally, Plaintiff's claim that Defendants are in violation of Rule 26 because they have withheld the identities of witnesses with information crucial to the case is simply mistaken. Indeed, since Plaintiff filed his opposition, the Parties have met and conferred, and Plaintiff has understood that Defendants have no "secret witnesses." Norton Decl., ¶17. Defendants have

explained that during their ongoing fact investigation, they have identified possible individuals who they believe could have useful information, but that for a number of reasons, Defendants have been unable to contact those individuals. *Id.* Pursuant to their discovery obligations, Defendants will disclose the identities of these individuals if and when they are able to make contact and confirm these witnesses are likely to have discoverable information and will not be used solely for impeachment. *See* FRCP 26(a)(1)(A)(i). Plaintiff has indicated he would not file the motion he threatened in his Opposition. *Id.*

III. CONCLUSION

Defendants have diligently pursued discovery, but due to the complexity of the case, Plaintiff's slow, piecemeal disclosures, and other factors beyond Defendants' control, the Scheduling Order does not allow sufficient time to conduct the discovery necessary to try the case on the merits. The recent unearthing of Plaintiff's California Workers' Compensation File and the information, witnesses, and documents contained therein make clear that Defendants have even more work to do than they previously anticipated. The Parties need more than the 120-day extension originally requested in the Motion, and Defendants respectfully request an extension of at least 180 days to complete discovery.

DATED this 16th day of August, 2019.

By: /s/ Christopher P. Norton

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On August 16, 2019, I caused a true and correct copy of the foregoing document described as:

DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' JOINT MOTION TO AMEND THE SCHEDULING ORDER [DKT. NO. 60]

to be served on all parties as follows:

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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Executed on August 16, 2019, at Los Angeles, California.

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